

BOARD OF APPEALS CASE NO. 5301

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BEFORE THE

APPLICANT: Wesley & Susan Wolfrum

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ZONING HEARING EXAMINER

**REQUEST: Variance to permit the existing dwelling*
and sunroom, new additions and deck within the
required setbacks; 2040 Rushmore Court, Bel Air**

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OF HARFORD COUNTY

Hearing Advertised

HEARING DATE: December 9, 2002

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Aegis: 10/16/02 & 10/23/02

Record: 10/18/02 & 10/25/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Wesley and Susan Wolfrum, are requesting a variance, pursuant to Ordinance 6, Section 10.05 and Section 267-23C(1)(a)(6) of the Harford County Code, to allow a dwelling and existing sunroom and new additions less than the required 40 foot rear yard setback (39 feet existing for house and 27 feet for sunroom and proposed additions) and less than the 30 feet for decks (27 feet proposed) in an R3/CDP District.

The subject parcel is located at 2040 Rushmore Court, Bel Air, Maryland 21015, and is more particularly identified on Tax Map 56, Grid 1E, Parcel 510, Lot 197. The parcel is 141 feet by 121 feet average dimensions (but is pie shaped), is presently zoned R3 – Urban Residential/CDP and is entirely within the First Election District.

Mr. Wesley Wolfrum appeared before the Hearing Examiner and testified that he owns the subject property and that he and his wife intend to construct a sunroom and deck to the rear of the home. There is an existing 12 foot by 12 foot sunroom that will be removed and replaced with a 12 foot by 24 foot structure that will span the width of the existing home (see Attachment 4). The Applicant plans a full foundation for the structure with an extended basement below. The basement will have standing headroom under part of the new structure and crawl space under the remainder. The total addition is a two-story affair that will match the appearance of the existing house.

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In addition to new exterior living space provided by the deck area and the year round sunroom space, the witness indicated that the new addition will also provide an additional bathroom and laundry room. This is particularly important to the Applicant as his two adult children will be both be moving home for an unknown period of time and further, the Applicant expects his aging mother to live with him within the next 2 years or so. As a result, he needs additional living and storage space.

The witness described his parcel as pie shaped, narrowing to the rear of his property. To the rear of his home is the Patterson Mill recreational area and to each side are larger, more rectangular and substantially deeper lots than his (Attachment 7A). All of these properties are well forested. The placement of his neighbors' homes indicates that they are oriented away from his property and should not be impacted at all by his additions. No reduction in the side yard setbacks are requested. There is no residence located to the rear of his home that will be impacted because of the Patterson Mill Recreation area. The witness stated that he spoke to both adjoining property owners and they had no objections to his proposal. Mr. Wolfrum explained that the house and sunroom existed when he bought the house and he was unaware that there was an existing encroachment into the rear yard setback until he submitted plans for the proposed construction. He pointed out that the variance is necessary even for the existing structure. Lastly, the witness pointed out that both adjoining properties are 50 feet or more deeper than his and that both of these homes, as well as other homes within the neighborhood, have additions and decks similar in size to the one he proposes.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning (Department). Mr. McClune stated that the Department had found the subject parcel unique in that: (1) it was pie-shaped, (2) is located on a cul-de-sac and, (3) the original house and sunroom was located well back from the minimum setbacks likely to maintain a consistent streetscape along the curved cul-de-sac. Mr. McClune agreed that the existing home and sunroom encroach into the rear yard setback and require a variance or demolition.

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In Mr. McClune's opinion, the proposal is justified based on the unique configuration of the property and the improvements thereon, the alignment of adjoining homes away from the subject property, the fact that no rear residence is impacted at all and no impact is proposed to the side yard. The proposed addition, according to the Department, is consistent with other additions found in this neighborhood. Lastly, Mr. McClune opined that a grant of the requested variance would be consistent with good planning and zoning practices and principals.

There were no persons that appeared in opposition to the subject request.

CONCLUSION:

The Applicants, Wesley and Susan Wolfrum, are requesting a variance, pursuant to Ordinance 6, Section 10.05 and Section 267-23C(1)(a)(6) of the Harford County Code, to allow a dwelling and existing sunroom and new additions less than the required 40 foot rear yard setback (39 feet existing for house and 27 feet for sunroom and proposed additions) and less than the 30 feet for decks (27 feet proposed) in an R3/CDP District.

Section 10.05 of the 1957 Zoning Code (Ordinance 6) requires a 40 foot rear yard setback.

Harford County Code Section 267-23C(1)(a)(6) provides:

"Exceptions and modifications to minimum yard requirements.

(1) Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area."

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The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property’s uniqueness exists.” Cromwell v. Ward, 102 Md. App. 691 (1995).

The Hearing Examiner finds that the subject parcel is unique for the reasons stated by the Applicant and the Department. The proposed addition is consistent with other similar additions found in both this neighborhood and throughout Harford County. The variance is necessary for the existing home and not just the proposed addition. These circumstances are not created by the Applicant as the encroachment existed prior to his ownership. The 12-foot width proposed by the Applicant is not overly large and is the same size as the existing deck that has existed for years without adverse impacts.

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It is not anticipated that the addition, as proposed, will result in any adverse impacts and the Department stated its expert opinion, accepted by the Hearing Examiner, that the proposal was consistent with good planning and zoning practices and principals and a grant would, therefore, not impair the purpose of the Code requirements.

For the foregoing reasons the Hearing Examiner recommends approval, subject to the condition that the Applicants obtain any and all necessary permits and inspections.

Date DECEMBER 30, 2002

William F. Casey
Zoning Hearing Examiner